

Amendments to the Drawings

The attached drawing sheets includes changes for the correction of typographical errors to Figure 21A, Figure 21E, Figure 23A, Figure 23E, Figure 24A, Figure 24E, Figure 26A, Figure 26D, Figure 26E, Figure 38A, Figure 38B, Figure 39A, and Figure 39D. Please replace the following original drawing sheets with the attached substitute sheets:

- the drawing sheet carrying Figure 21A;
- the drawing sheet carrying Figure 21E and 21F;
- the drawing sheet carrying Figure 23A;
- the drawing sheet carrying Figure 23E and 23F;
- the drawing sheet carrying Figure 24A;
- the drawing sheet carrying Figure 24E and 24F;
- the drawing sheet carrying Figure 26A;
- the drawing sheet carrying Figure 26D;
- the drawing sheet carrying Figure 26E;
- the drawing sheet carrying Figure 38A;
- the drawing sheet carrying Figure 38B;
- the drawing sheet carrying Figure 39A; and
- the drawing sheet carrying Figure 39D.



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REMARKS/ARGUMENTS

It is noted that the Examiner has required restriction to one of six claim groupings citing the provisions of the MPEP and indicating that an identification of species then is elected. The restriction groupings are as follows:

- I. Claims 1-22 and 139-150
- II. Claims 23-39, 66-76, 135-138, 151-159 and 171-179
- III. Claims 40-65, 94-103, 160-170 and 185-195
- IV. Claims 77-93 and 180-184
- V. Claims 104-118
- VI. Claims 119-134 and 196-217

The applicants provisionally elect Group III encompassing claims 40-65, 94-103, 160-170 and 185-195. An election is made with traverse.

§121 of the Patent Statute authorizes a requirement restriction only when two or more independent and distinct inventions are claimed in one application. While the invention defined by the claims of the Groups I-VI may be distinct and separately patentable in different applications, it is clear that these inventions are dependent in that each is related to the other in operation or effect. The Statute requires both independence and distinctness, not either, and provides such requirements in definite terms. The construction adopted by the Manual of Patent Examining Procedure assumes that the Statute authorizes restriction between inventions which are not independent and distinct but which are either independent or distinct. It is applicants' position that the plain meaning of the Statute defies such construction. For this reason, the applicants request that the restriction requirement be withdrawn so that all of the claims may be prosecuted as a single invention.

The MPEP [is] commonly relied upon as a guide to patent attorneys and patent examiners on procedural matter." *Litton Sys., Inc. v Whirlpool Corp.*, 728 F.2d 1423, 1439, 221 USPQ 97, 107 (Fed Cir. 1984). While the MPEP does not have the force of law, it is entitled to judicial notice as an official interpretation of statutes or regulations as long as it is not in conflict therewith. *Id.*, at 1439, 221 USPQ at 107.

Molins PLC v. Textron Inc., 48 F 3rd 1172, 1180, n. 10, 33 USPQ 2d 1823 (CAFC 1995). Emphasis added.

Concerning the species requirement, the claims within Group III are quite extensive with respect to the drawing figures. In this regard, the following figures are involved in connection with the provisionally elected claims: 9, 10A-10C, 13-14, 14A-14C, 15, 15A-15B, 18-19, 21A-21G, 22, 23A-23H, 24A-24G, 25, 26A-26J, 27-37, 38A-38B, 39A-39H, 40-42.

The amendments to the specification are for the correction of a typographical error. The word "tether" was misspelled.

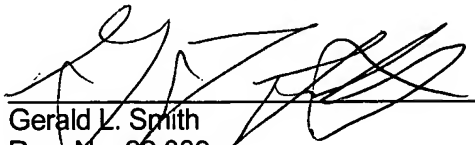
Claims 1, 6, 17, and 18 have been amended to replace the term "subcutaneous" with a reference to "tissue." There is extensive support throughout the specification for the term "tissue" in regards to utilization of the invention.

The attached substitute drawing sheets are for the correction of obvious typographical errors in the figure legends. The word "susceptibility" was misspelled in panel 894 of Figure 21A. The word "timing" was misspelled in panel 1004 of Figure 21E. The word "susceptibility" was misspelled in panel 1124 of Figure 23A. There was a missing space in panel 1228 of Figure 23E and the word "component" was misspelled in panel 1262 of Figure 23F. The word "susceptibility" was misspelled in panel 1334 of Figure 24A. The word "timing" was misspelled in panel 1444 of Figure 24E and the word "component" was misspelled in panel 1478 of Figure 24F. The word "susceptibility" was misspelled in panel 1616 of Figure 26A. The word "duty" was misspelled in panel 1692 of Figure 26D. The word "therapy" was misspelled in panel 1760 of Figure 26E. The word "bracketing" was misspelled in panels 2044 and 2048 and an extraneous underscore was deleted from panel 2056 of Figure 38A. The word "integral" was misspelled in panel 2080 of Figure 38B. The word "circulatory" was misspelled in panel 2098 of Figure 39A. The word "turn" was misspelled in panel 2240 and an extra word "console" was deleted from panel 2226 of Figure 39D. Substitute drawing sheets showing these corrections are submitted herewith.

All of the submitted amendments are of a formal nature only. Consequently no previously presented matter is introduced by any of these amendments to the specification. Entry of the amendments and passage of the application to issuance is respectfully requested.

Respectfully submitted,

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